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Regulatory
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Final Regulation Agency Background Document

Agency name	State Council of Higher Education for Virginia
Virginia Administrative Code (VAC) citation	8 VAC 40-31
Regulation title	Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas, and Certificates
Action title	The revision of the existing regulations will strengthen protection provisions and standards for students attended certified postsecondary institutions.
Date this document prepared	February 28, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

These regulations will strengthen or enhance protections of students attended certified postsecondary institutions operating within the Commonwealth of Virginia. The regulations provide specific expectations of faculty and administrator qualifications require schools to use GAAP in its financial reporting, clarify actions that may result in the suspension or revocation of a school's certificate to operate and describes requirements of a teach-out arrangement in the event of the closure of a certified school. There was one change to the regulation and one correction for a typographical error from publication of the proposed regulation to the final regulation.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

The State Council of Higher Education for Virginia took final action on 8VAC40-31, Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas, and Certificates, on February 28, 2013.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The State Council of Higher Education for Virginia is granted explicit authority to promulgate regulations necessary to implement the provisions of § 23-276.3 of the Code of Virginia which states: "The State Council of Higher Education for Virginia shall adopt, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) such regulations as may be necessary to implement the provisions of this chapter. The Council's regulations shall include, but need not be limited to, (i) procedures by which a school may apply for Council approval to confer degrees in Virginia; (ii) measures designed to ensure that all postsecondary schools that are subject to the provisions of this chapter meet minimal academic standards; (iii) protections for students pursuing postsecondary education opportunities in schools subject to the provisions of this chapter; and (iv) information to assist persons who rely on postsecondary degrees, diplomas, and certificates in judging the competence of individuals."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The regulations governing private and out-of-state postsecondary institutions are designed to ensure the certified schools meet minimal academic standards, provide protections to students pursuing postsecondary educational opportunities at these schools, and provide information to persons who rely on postsecondary degrees in judging the competence of individuals. Amending, modifying and deleting the current version of 8 VAC 40-31 et. seq. will ensure that the certified institutions continue to provide a valuable service to the citizens of the Commonwealth of Virginia.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The proposed regulations will enhance consumer protections for students attending certified schools. They clarify certain expectations for schools that had been unwritten previously. Certified schools will better understand equipment and facility requirements, actions that may result in the suspension or revocation of a school's certificate to operate, and standards regarding administrator and faculty

requirements. SCHEV may defer to accrediting agency standards when such expectations may conflict with SCHEV requirements for accredited postsecondary institutions. The proposed regulations provide guidance to schools when closing to ensure student are allowed to complete their program of study via an approved teach-out arrangement. Finally, the proposed regulations will eliminate the noncompliance fee charged when a school is determined to be out of compliance, but add fees for services rendered by SCHEV staff toward the certified schools.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The regulatory action poses no disadvantages to the public or to the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
8VAC 40-31-140 (D) (4)	All instructional faculty teaching in a program at the master's level or higher shall hold a doctoral or other terminal degree from an accredited college or university.	Added the words “ in the discipline being taught” after the word degree.	To make the wording consistent with other sections describing faculty qualifications for degree programs.
8VAC 40-31-160 (N)(5)	However, after 14 calendar days, the institution is expected to have determined whether the student intends to return to classes or to withdraw. In addition, if the student is eventually determined to have withdrawn, the end of the 12-day period begins the timeframe for calculating the refunds.	Changed “12-day period” to “14- day period”	Typographical error

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Nora Leonard	8VAC40-31-160 E – 3 With regards to records alteration, what records are being referred to in this statement? Final transcript or formative documents like course grades in the LMS?	Formative documents
Nora Leonard	8VAC40-31-160(N)(5) This section is confusing. 12 days or 14 days?	This is a typographical error. Both should read 14 days
Nora Leonard	8VAC40-31-160 (N)(6) We provide for an LOA of up to one year. If we are required to limit this to 6 months, then the student would be withdrawn from the college at 6 months and have to reapply to return when their course is offered again.	This is in regard to TITLE IV financial aid requirements only. You will be able to continue your current process for student retention purposes.
Nora Leonard	8VAC40-31-260 The proposed fee for our institution will double. This is a significant hit to our budget. It might be easier to adjust to a phased in increase over 2-3 years.	We gave careful consideration to the fees we currently charge. We reduced fees for the smallest institutions and raised the fees for institutions earning over a million in tuition per year. This was in an effort to be fairer to the very small schools. We will consider your suggestion to phase in an increase over a period of time and will confer with the Office of the Attorney General to determine its feasibility

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

<p>8 VAC 40-31-10 Definitions</p>	<p>.N/A</p>	<p>This section provides definition of terms used within the regulations.</p>	<ul style="list-style-type: none"> • Clarify definition of “administrative capability”. • Define “conditional certification”. • Define “distance education” • Define “graduate credit” • Define “private postsecondary career school” • Delete “proprietary school” • Define “provisional certification” • Change “site” to “instructional site” • Clarify definition of a “vocational school
<p>8 VAC 40-31-30 Advertisement, announcements, and other promotional materials</p>	<p>N/A</p>	<p>This section provides guidance to certified schools concerning advertising.</p>	<ul style="list-style-type: none"> • Delete requirement that out-of-state schools must have permission from their state approving agency to offer courses or degree programs outside the home state. • Delete requirement that school must state that it is certified to operate by SCHEV on course registration materials. • Clarify that schools must state that it is certified to operate by SCHEV on all publicity, advertisement, and promotional materials distributed to current or prospective students
<p>8 VAC 40-31-50 Religious institutions</p>	<p>N/A</p>	<p>This section provides guidance for postsecondary institutions desiring the religious exemption from the requirement of certification</p>	<ul style="list-style-type: none"> • Clarify that schools seeking religious exemption from certification may not award degrees with secular titles.
<p>8 VAC 40-31-60 Schools, programs, degrees, diplomas, and certificates exempt from Council action</p>	<p>N/A</p>	<p>This section explains the various programs that may be offered by a postsecondary institution that may be exempt from the requirement of certification.</p>	<ul style="list-style-type: none"> • Allow exemption for programs conducted on a not-for-profit basis by an organization for training of their employees, provided employees are not charged tuition and advertising for open enrollment is not used. • Clarify that when a school offers exempt

			and non-exempt programs, the school as a whole is subject to the provisions of certification.
8 VAC 40-31-110 Certain existing approvals and exemptions continued	N/A	This section speaks to the exemptions offered to all public and some private postsecondary schools, and when such exemption can be revoked	<ul style="list-style-type: none"> Clarify that if a previously exempt school's authorization to grant or confer degrees is revoked, the school's exemption will end and the school will be subject to the provisions of certification in place at the time of the revocation
8 VAC 40-31-120 Certification required for new and existing postsecondary schools	N/A.	This section speaks to the types of postsecondary school that are required to certify in order to operate in Virginia.	<ul style="list-style-type: none"> Replaced "site" with "location" Added that school operating branches "in Virginia" must certify each separately
8 VAC 40-31-130 Application of certification criteria	N/A	This section speaks to the requirement that institution must certify compliance to all standards of this chapter.	<ul style="list-style-type: none"> Require institutions to comply with all local, state, and federal statutes, laws, and codes. Clarify that a site visit is part of the initial certification process. Introduce provisions for a provisional certification
8 VAC 40-31-140 Certification criteria for institutions of higher education	N/A	This section provides specific guidance to degree-granting institutions regarding curriculum administrator and faculty qualifications	<ul style="list-style-type: none"> Separated course, program, curriculum and instruction standards from administrator and faculty credentialing standards. Clarify that all instructors must hold degrees from accredited colleges or universities in the discipline being taught. Added qualification standards for administrators and administrative personnel

<p>8 VAC 40-31-150 Certification criteria for career- technical schools</p>	<p>N/A</p>	<p>This section provides specific guidance to career-technical schools regarding curriculum, administrator and faculty qualifications</p>	<ul style="list-style-type: none"> • Separated course standards from administrator and faculty credentialing standards. • Clarify that all instructors must hold degrees from accredited colleges or universities in the discipline being taught. • Added qualification standards for administrators and administrative personnel
<p>8 VAC 40-31-160 Certification criteria for all postsecondary schools</p>	<p>N/A</p>	<p>This section provides guidance to all certified schools concerning general operational requirements.</p>	<ul style="list-style-type: none"> • Added language that allows SCHEV to apply a presumption of compliance with criteria in this section for accredited schools. • Remove requirement that schools must obtain a records maintenance agreement with another school or organization. • Require that all financial statements adhere to GAAP. • Provide standards for telecommunication programs and courses. • Modify refund policy for schools that employ an add/drop period • Introduce provisions for leaves of absence. • Introduce provisions for school programs that require internships, externships or production work. • Added statement that student will not be subjected to adverse actions by school for filing a complaint to SCHEV. • Added provision that schools seeking a

			<p>waiver of the surety instrument must submit an audited financial statement.</p> <ul style="list-style-type: none"> • Added required SCHEV notifications, i.e. new/change of location, new program, new school administrators, etc
8 VAC 40-31-170 Initial certification	N/A	This section speaks to specific actions required by a postsecondary school submitting an initial application for certification.	<ul style="list-style-type: none"> • Distinguish when a school can use “college” or “university” in its name. • Require that a school that allows its certificate to operate to expire must reapply for certification as a new institution. • Define what constitutes a change of ownership. • Included “site visit” as a step in the certification process
8 VAC 40-31-180 Application Requirements	N/A	This section speaks to the application requirements of a postsecondary school submitting an initial application for certification	<ul style="list-style-type: none"> • Require out-of-state institutions seeking certification to operate in Virginia to attest that it has received no determination of limitation, suspension, revocation or termination by the U.S. Department of Education, an accrediting body or a state regulatory body within the past five years. • Require submission of a three-year projected budget with initial application for certification that demonstrates schools’ ability to maintain operational continuity for up to three years. • Added statement that schools seeking certification must successfully complete

			a site visit prior to issuance of certificate to operate
8 VAC 40-31-200 Audit requirements	N/A	This section explains when a school may be subject to an audit.	<ul style="list-style-type: none"> Allow council to change a school's status to "conditional" or to initiate suspension or revocation of the certificate to operate as a result of a school audit.
8 VAC 40-31-220 Procedural rules for the conduct of fact-finding conferences and hearings	N/A	This section explains the procedural rules required by Council and schools concerning fact finding conferences and formal hearings.	<ul style="list-style-type: none"> Clarify actions of Council and schools in regards to an informal fact-finding conference or a formal hearing. Allow for a consent agreement to settle the matter without further administrative action.
8 VAC 40-31-260 Fees	N/A	This section provides guidance regarding the fees required of certified schools	<ul style="list-style-type: none"> Introduce new fees for services rendered by Council staff. Clarify that recertification fees are based on the school's annual gross tuition. Introduce revised recertification fees. Eliminate noncompliance administrative fee. Clarify that Council may revise fees annually to ensure adequate resources to implement the provisions of this chapter.
8 VAC 40-31-280 Closure of a postsecondary school	N/A	This section provides guidance to schools that cease operations in Virginia.	<ul style="list-style-type: none"> Provide provisions for a teach-out plan. Clarify required actions if school closes and provide instruction concerning the documents that must be forwarded to SCHEV for storage.
8 VAC 40-31-300 Freedom of Information Act to apply	N/A	This section states that all documents retained by SCHEV are subject to the provisions of the Freedom of Information Act	<ul style="list-style-type: none"> Eliminate this section, as all documents retained by SCHEV are subject to the provisions of the Freedom of Information Act.
8 VAC 40-31-310 Student Tuition Guaranty Fund	N/A	This section provides guidance concerning the distribution of funds via the	<ul style="list-style-type: none"> Clarify that purpose of funds is to reimburse students for tuition

		Student Tuition Guaranty Fund.	<p>and fees when a certified school ceases to operate.</p> <ul style="list-style-type: none"> Removed requirement of “show cause” by school, as the school must be closed before a student is eligible to file a claim.
8 VAC 40-31-320 Agent registration	N/A	This section provides guidance to agents that solicit in Virginia.	<ul style="list-style-type: none"> Changed “sites” to “instructional locations”
N/A	8 VAC 40-31-165 Equipment and facilities	N/A	<ul style="list-style-type: none"> This section provides guidance to schools on the standards of equipment and facilities expected to operate in Virginia Laws required by localities,
N/A	8 VAC 40-31-193 Loss of Accreditation	N/A	<ul style="list-style-type: none"> This section provides guidance to certified schools that lose accreditation.
N/A	8 VAC 40-31-195 Suspension or revocation of certificate to operate	N/A	<ul style="list-style-type: none"> This section outlines actions of a school that may result in the suspension or revocation of its certificate to operate.